

## Item SPR05-04 Response Form

**Title:** **Appellate Procedure: Petitions for writs of habeas corpus and copies of applications to extend time** (adopt Cal. Rules of Court, rule 60.5, and amend rules 44, 56, and 60)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Monday, June 20, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

## Invitation to Comment (SPR05-04)

Title	<b>Appellate Procedure: Petitions for writs of habeas corpus and copies of applications to extend time</b> (adopt Cal. Rules of Court, rule 60.5, and amend rules 44, 56, and 60)
Summary	<p>This proposal would amend rules 44, 56, and 60 to clarify the number of copies of supporting documents that must be filed with a petition for a writ of habeas corpus and to provide that a petitioner who is not represented by an attorney and who files a petition for writ of habeas corpus using form MC-275 in the Court of Appeal need file only the original. The proposal would also amend rule 44 to require that a party provide the court with enough copies of an application to extend time for all parties.</p>
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p><u>Petitions for writs of habeas corpus—supporting documents</u></p> <p>Rule 44(b)(2)(B) of the California Rules of Court provides that an original and four copies of a petition must be filed in the Court of Appeal. However, if the supporting documents to such a petition are separately bound, rule 44(b)(3) provides that only one copy of these supporting documents must be filed.</p> <p>Many petitions for writs of habeas corpus are filed by prisoners who are not represented by counsel. Given prison copying facilities and other factors, it may be difficult for prisoners to separately bind their supporting documents from their petition and get four copies of their petition and only one copy of the supporting documents produced for filing. As a result, regardless of the current rules, it is likely that prisoners filing petitions for writs of habeas corpus will either file only the original petition and one set of supporting documents or four copies of everything. In many cases the extra copies of the supporting documents, which may be voluminous, are not needed.</p> <p>To save the time and expense associated with copying and mailing these extra copies of supporting documents, the Appellate Advisory Committee proposes amending rules 44 and 60 to provide that petitioners who are not represented by attorneys need file only the original of a petition for writ of habeas corpus and one set of supporting documents in the Court of Appeal, they need not file any</p>

copies. Rule 44, which specifies the number of copies of documents that generally must be filed in the Supreme Court (44(b)(1)) and Court of Appeal (44(b)(2)), would be amended to clarify that there may be exceptions to its general requirements. Rule 60, relating to petitions for writs of habeas corpus, would then be amended to add new subdivision (a)(3) specifying that only the original of a petition for writ of habeas corpus and supporting documents need be filed in the Court of Appeal by a person who is not represented by an attorney. Note that new 60(a)(3) would not apply to petitions filed in the Supreme Court; current rule 44(b)(1) requiring 10 copies of the petition and 2 copies of any supporting documents in the Supreme Court would remain unchanged.

The committee recognizes that this proposed change would eliminate not only the extra copies of the supporting documents that might now be filed, but also any copies of the petition that might now be filed under rule 44(b)(2)(B). The committee specifically invites comments concerning the impact of eliminating the requirement that four copies of these petitions be filed.

The proposal also contains several other amendments to rules 44, 56, and 60 that relate to petitions for writs of habeas corpus and supporting documents:

- The substance of current rule 44(b)(3) would be moved into 44(b)(2)(D). This amendment is intended to clarify that this provision addresses only the number of copies of supporting documents that must be filed in the Court of Appeal, not in the Supreme Court.
- Current rule 60(b), which addresses petitions filed by attorneys, would be separated out into a new rule 60.5. This is intended help clarify the requirements applicable both to attorneys and to individuals not represented by attorneys.
- Rule 60(a)(1) would be amended to eliminate the reference to other original proceedings that might be used for the same purpose as a habeas petition. The committee believes that this is an unnecessary reference to arcane writs that are no longer used for this purpose.
- Rule 60(a)(2) would be amended to exempt persons who are not represented by an attorney from the form and format requirements not only in rule 56, but also in rules 14 and 44. The committee believes that this is consistent with both the intent of this provision and the general practice.
- To eliminate confusion about the number of copies of supporting documents that must be filed, both rule 56(d)(3) and the provisions of rule 60 that were moved to new rule 60.5(b)(7) would be

amended to incorporate references to the appropriate subdivisions of rule 44 for the number of copies of supporting documents that must be filed in the Supreme Court and Courts of Appeal. (Note that other amendments to rule 56, relating to the filing of a certificate of interested persons or entities, are also being circulated for public comment.)

Applications to extend time—additional copies

As noted above, rule 44(b)(2) identifies the number of copies of documents that must be filed with the Court of Appeal. Current subdivision (D) provides that for those documents not otherwise specified in the rule, including applications to extend time, only an original and one copy must be filed with the court. The committee understands that, in practice, courts often simply endorse their order regarding the extension of time on the application. The new Judicial Council form APP-006, *Application for Extension of Time to File Brief (Civil Case)*, in fact, specifically includes an area at the bottom of the application that the court can use to make the order. Since the court is required to mail all parties a copy of an order granting or denying an extension of time, the committee is proposing that rule 44(b) be amended to require that a party provide the court with enough copies of an application to extend time for all separately represented or unrepresented parties. The court can then endorse the order on these copies of the application and mail them to the parties. Note that rule 43 already requires that the parties provide enough envelopes for mailing copies of an order granting or denying an extension of time to all parties.

Attachment

Rules 60.5 of the California Rules of Court would be adopted and rules 44, 56, and 60 would be amended, effective January 1, 2006, to read:

**Rule 44. Form, number, and cover of documents filed in the reviewing court**

**(a) Form**

Except as these rules provide otherwise, documents filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 14(b).

**(b) Number of copies**

Except as these rules provide otherwise, the following number of copies must be filed of every brief, petition, motion, or other document, except the record, filed in a reviewing court:

(1) If filed in the Supreme Court:

- (A) Except as provided in (D), an original and 13 copies of a petition for review, an answer, a reply, a brief on the merits, an amicus curiae brief, an answer to an amicus curiae brief, a petition for rehearing, or an answer to a petition for rehearing;
- (B) Unless the court orders otherwise, an original and 10 copies of a petition for a writ within the court's original jurisdiction, an opposition or other response to the petition, or a reply;
- (C) Unless the court orders otherwise, an original and 2 copies of any supporting document accompanying a petition for writ of habeas corpus, an opposition or other response to the petition, or a reply;
- (D) An original and 8 copies of a petition for review to exhaust state remedies under rule 33.3, an answer, or a reply, or an amicus curiae letter under rule 28(g);
- (E) An original and 8 copies of a motion or an opposition or other response to a motion; and
- (F) An original and 1 copy of an application, including an application to extend time, or any other document.

(2) If filed in a Court of Appeal:

- (A) An original and 4 copies of a brief, an amicus curiae brief, or an answer to an amicus curiae brief, and, in civil appeals, proof of delivery of 4 copies to the Supreme Court;
- (B) An original and 4 copies of a petition, an answer, opposition or other response to a petition, or a reply;
- (C) An original and 3 copies of a motion or an opposition or other response to a motion; and
- (D) Unless the court orders otherwise by local rule or in the specific case, one set of any separately bound supporting documents accompanying a document filed under (B) or (C);
- ~~(D)~~(E) An original and 1 copy of an application, including other than an application to extend time, or any other document; and
- (F) An original and 1 copy of an application to extend time. In addition, 1 copy for each separately represented or unrepresented party must be provided to the court.
- ~~(3) Unless the court orders otherwise by local rule or in the specific case, only one set of any separately bound supporting documents accompanying a document filed under (2)(B) or (C) need be filed.~~

(c) **Cover color \*\*\***

(d) **Cover information \*\*\***

## **Rule 56. Original proceedings**

### **(a) Application**

- (1) This rule governs petitions to the reviewing court for writs of mandate, certiorari, or prohibition, or other writs within its original jurisdiction. In all respects not provided for in this rule, rule 14 applies.
- (2) This rule does not apply to petitions for writs of habeas corpus, except as provided in rule ~~60~~ 60.5, or to petitions for writs of review under rules 57–59.

### **(b) Petition \*\*\***

1   **(c) Contents of supporting documents**  
2

3       (1) A petition that seeks review of a trial court ruling must be accompanied by an  
4       adequate record, including copies of:

5  
6       (A) The ruling from which the petition seeks relief;  
7

8       (B) All documents and exhibits submitted to the trial court supporting and  
9       opposing the petitioner's position;  
10

11       (C) Any other documents or portions of documents submitted to the trial  
12       court that are necessary for a complete understanding of the case and the  
13       ruling under review; and  
14

15       (D) A reporter's transcript of the oral proceedings that resulted in the ruling  
16       under review.  
17

18       (2) If a transcript under (1)(D) is unavailable, the record must include a declaration  
19       by counsel:  
20

21       (A) Explaining why the transcript is unavailable and fairly summarizing the  
22       proceedings, including counsel's arguments and any statement by the  
23       court supporting its ruling; or  
24

25       (B) Stating that the transcript has been ordered, the date it was ordered, and  
26       the date it is expected to be filed, which must be a date prior to any action  
27       requested of the reviewing court other than issuance of a temporary stay  
28       supported by other parts of the record.  
29

30       (3) A declaration under (2) may omit a full summary of the proceedings if part of  
31       the relief sought is an order to prepare a transcript for use by an indigent  
32       criminal defendant in support of the petition and if the declaration  
33       demonstrates the petitioner's need for and entitlement to the transcript.  
34

35       (4) In exigent circumstances, the petition may be filed without the documents  
36       required by (1)(A)–(C) if counsel files a declaration that explains the urgency  
37       and the circumstances making the documents unavailable and fairly  
38       summarizes their substance.  
39

40       (5) If the petitioner does not submit the required record or explanations or does  
41       not present facts sufficient to excuse the failure to submit them, the court  
42       may summarily deny a stay request, the petition, or both.

1  
2 **(d) Form of supporting documents**

- 3  
4 (1) Documents submitted under (c) must comply with the following  
5 requirements:  
6  
7 (A) They must be bound together at the end of the petition or in separate  
8 volumes not exceeding 300 pages each. The pages must be  
9 consecutively numbered.  
10  
11 (B) They must be index-tabbed by number or letter.  
12  
13 (C) They must begin with a table of contents listing each document by its  
14 title and its index-tab number or letter. If a document has attachments,  
15 the table of contents must give the title of each attachment and a brief  
16 description of its contents.  
17  
18 (2) The clerk must file any supporting documents not complying with (1), but  
19 the court may notify the petitioner that it may strike or summarily deny the  
20 petition if the documents are not brought into compliance within a stated  
21 reasonable time of not less than five days.  
22  
23 (3) Rule ~~44(b)(2)~~ 44(b)(1) governs the number of copies of supporting  
24 documents to be filed in the Supreme Court; rule 44(b)(2) governs the  
25 number of copies of supporting documents to be filed in the Court of Appeal.  
26

27 **(e)–(l) \*\*\***  
28  
29

30 **Rule 60. Petition for writ of habeas corpus filed by petitioner not represented by an**  
31 **attorney**  
32

33 **(a) Required Judicial Council form**  
34

- 35 (1) A person who is not represented by an attorney and who A-petitions to a  
36 reviewing court for a writ of habeas corpus—or other writ within its original  
37 jurisdiction—that seeks seeking release from, or modification of the conditions  
38 of, custody of a person confined in a state or local penal institution, hospital,  
39 narcotics treatment facility, or other institution, must be filed file the petition  
40 on Judicial Council form MC-275, *Petition for Writ of Habeas Corpus*. For  
41 good cause the court may permit the filing of a petition that is not on form  
42 MC-275.



1  
2 (2) A petition ~~on form MC-275~~ filed under (1) need not comply with the  
3 provisions of rules 14, 44, or 56 that prescribe the form and content of a  
4 petition and require the petition to be accompanied by points and authorities.  
5

6 (3) In the Court of Appeal, a petition filed under (1) need not comply with the  
7 provisions of rule 44 that specify the number of copies to be filed. The  
8 petitioner must file the original of the petition under (1) and one set of any  
9 supporting documents in the Court of Appeal, but need not file any additional  
10 copies of the petition or supporting documents.  
11

12 **~~(b) Petition filed by attorney~~**

13  
14 If the petition is filed by an attorney:

15  
16 ~~(1) The petition need not be filed on form MC-275 but must contain the~~  
17 ~~information requested in that form and must comply with rule 14(a) (b).~~  
18

19 ~~(2) Any memorandum of points and authorities accompanying the petition must~~  
20 ~~comply with rule 14(a) (b).~~  
21

22 ~~(3) The petition must be accompanied by a copy of any petition—excluding~~  
23 ~~exhibits—pertaining to the same judgment and petitioner that was previously~~  
24 ~~filed in any lower state court or any federal court. If such documents have~~  
25 ~~previously been filed in the Supreme Court, the petition need only so state.~~  
26

27 ~~(4) Any supporting documents accompanying the petition must comply with rules~~  
28 ~~44(b)(1)(C) and 56(d).~~  
29

30 ~~(5) The petition and any memorandum of points and authorities must support any~~  
31 ~~reference to a matter in the supporting documents by a citation to its index tab~~  
32 ~~and page.~~  
33

34 ~~(6) If the petition asserts a claim that was the subject of an evidentiary hearing, the~~  
35 ~~petition must be accompanied by a certified transcript of that hearing.~~  
36

37 ~~(7) The clerk must file an attorney's petition not complying with (1) (6) if it~~  
38 ~~otherwise complies with the rules of court, but the court may notify the~~  
39 ~~attorney that it may strike the petition or impose a lesser sanction if the petition~~  
40 ~~is not brought into compliance within a stated reasonable time of not less than~~  
41 ~~five days.~~  
42

1 **~~(e)~~ (b) Record**

2  
3 Before ruling on the petition, the court may order the custodian of any relevant record to  
4 produce the record or a certified copy to be filed with the court.  
5

6 **~~(d)~~ (c) Informal response**

7  
8 (1) The court may request an informal written response from the respondent, the  
9 real party in interest, or an interested person. The court must send a copy of  
10 any request to the petitioner.  
11

12 (2) The response must be served and filed within 15 days or as the court specifies.  
13

14 (3) If a response is filed, the court must notify the petitioner that a reply may be  
15 served and filed within 15 days or as the court specifies. The court may not  
16 deny the petition until that time has expired.  
17

18 **~~(e)~~ (d) Petition unrelated to appellate district**

19  
20 (1) A Court of Appeal may deny without prejudice a petition for writ of habeas  
21 corpus that is based primarily on facts occurring outside the court's appellate  
22 district, including petitions that question:  
23

24 (A) The validity of judgments or orders of trial courts located outside the  
25 district; or  
26

27 (B) The conditions of confinement or conduct of correctional officials outside  
28 the district.  
29

30 (2) If the court denies a petition solely under (1), the order must state the basis of  
31 the denial and must identify the appropriate court in which to file the petition.  
32  
33

34 **Rule 60.5. Petition for writ of habeas corpus filed by an attorney for a party**

35  
36 **(a) General application of rule 60**

37  
38 Except as provided in this rule, rule 60 applies to any petition for a writ of habeas  
39 corpus filed by an attorney.  
40

41 **(b) Special requirements for petition filed by attorney**

- 1       (1) A petition for a writ of habeas corpus filed by an attorney need not be on form  
2       MC-275 but must contain the information requested in that form and must  
3       comply with rules 14(a)–(b), 44(c)–(d), and 56(b)(6).  
4
- 5       (2) Any memorandum of points and authorities accompanying the petition must  
6       comply with rule 14(a)–(b).  
7
- 8       (3) The petition must be accompanied by a copy of any petition—excluding  
9       exhibits—pertaining to the same judgment and petitioner that was previously  
10       filed in any lower state court or any federal court. If such documents have  
11       previously been filed in the Supreme Court, the petition need only so state.  
12
- 13       (4) If the petition asserts a claim that was the subject of an evidentiary hearing, the  
14       petition must be accompanied by a certified transcript of that hearing.  
15
- 16       (5) Any supporting documents accompanying the petition must comply with rule  
17       56(d).  
18
- 19       (6) The petition and any memorandum of points and authorities must support any  
20       reference to a matter in the supporting documents by a citation to its index tab  
21       and page.  
22
- 23       (7) If the petition is filed in the Supreme Court, the attorney must file the number  
24       of copies of the petition and supporting documents required by rule 44(b)(1).  
25       If the petition is filed in the Court of Appeal, the attorney must file the number  
26       of copies of the petition and supporting documents required by rule 44(b)(2).  
27
- 28       (8) The clerk must file an attorney’s petition not complying with (1)–(7) if it  
29       otherwise complies with the rules of court, but the court may notify the  
30       attorney that it may strike the petition or impose a lesser sanction if the petition  
31       is not brought into compliance within a stated reasonable time of not less than  
32       five days.